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NOTES.

DIVORCE DECREES UNDER THE FULL FAITH AND CREDIT CLAUSE.—As marriage is not merely a contract, *Maynard* v. *Hill* (1888) 125 U. S. 190, but an institution, giving a peculiar status to the parties, courts have agreed with practical unanimity that a suit for divorce is not simply an action in personam for breach of a contract, but is an action in rem or quasi in rem to determine the status of the parties. *Hyde* v. *Hyde* (1866) L. R. 1 P. & D. 130; *Ditson* v. *Ditson* (1856) 4 R. I. 87; *People* v. *Baker* (1879) 76 N. Y. 78; *Pennoyer* v. *Neff* (1877) 95 U. S. 714, 734; 2 Bishop, Marriage, Divorce & Separation, § 133 et seq. On no other theory can the cases be supported that deny the validity of a divorce where the action was brought in a state where neither party was domiciled, although both appeared in the action. *Andrews* v. *Andrews* (1903) 188 U. S. 14. But see *McCreery* v. *Davis* (1894) 44 S. C. 195, contra. It is further agreed that every state, as an incident of its sovereignty, has jurisdiction to determine the status of all persons domiciled within it. *People* v. *Baker*, supra p. 84; *Maynard* v. *Hill*, supra; *Strader* v. *Graham* (U. S. 1850) 10 How. 82.

When a state has exercised this right by means of a judicial proceeding, the status thus determined by a court of competent jurisdiction should, it would seem, be entitled to full faith and credit under the Constitution in every sister state. This has been admitted in cases of legitimation, *Scott* v. *Key* (1856) 11 La. Ann. 232, adoption, *Van Matre* v. *Sankey* (1893) 148 Ill. 536, and custody of children. *Wakefield* v. *Ives* (1872) 35 Ia. 238. In the case of divorce, the same rule should apply. When the courts of a state, having jurisdiction of the status of an individual by virtue of his domicil within the state, have decreed that he or she shall cease to have the status of a married person, and shall resume the status of an unmarried person, such a determination should be conclusive in all other states, regardless whether the other party to the marriage was or was not domiciled within the state, or was or was not duly

served with process within the state. As marriage is a reciprocal relation, the married status of the other party would also be dissolved, but this is merely an incidental result of the decree. Such is the decided weight of authority in the state courts, *Harding* v. *Alden* (1832) 9 Me. 140, 150; *Ditson* v. *Ditson* (1856) 4 R. I. 87 semble; *Cooper* v. *Cooper* (1836) 7 Ohio 528; *Cox* v. *Cox* (1869) 19 Oh. St. 502, 510 semble; *Thompson* v. *State* (1856) 28 Ala. 12; *Gould* v. *Crow* (1874) 57 Mo. 200; *Van Orsdal* v. *Van Orsdal* (1885) 67 Ia. 35; *In re James* (1893) 99 Cal. 374; *Thurston* v. *Thurston* (1894) 58 Minn. 279; *Thoms* v. *King* (1895) 95 Tenn. 60; *Knowlton* v. *Knowlton* (1895) 155 Ill. 158; *Hilbish* v. *Hattle* (1896) 145 Ind. 59, and was believed to be the doctrine of the federal courts. *Pennoyer* v. *Neff*, supra; *Atherton* v. *Atherton* (1901) 181 U. S. 155. In the following cases the same result was reached, although perhaps on the ground of comity. *Felt* v. *Felt* (1899) 59 N. J. Eq. 606; *Shafer* v. *Bushnell* (1869) 24 Wis. 372. Of course such a foreign decree does not, any more than a domestic decree, destroy those vested rights of a wife in the property of her husband which do not depend upon the continuance of the marital relation. *Cook* v. *Cook* (1882) 56 Wis. 195; *Van Orsdal* v. *Van Orsdal*, supra. But in four states full faith and credit has been refused to a divorce decree where the defendant was domiciled without the jurisdiction and personal service was not secured. *Jones* v. *Jones* (1888) N. Y. 415, 424; *Colvin* v. *Reed* (1867) 55 Pa. St. 375; *McCreery* v. *Davis* supra; *Harris* v. *Harris* (1894) 115 N. C. 587, cf. however, *Bidwell* v. *Bidwell* (N. C. 1905) 52 S. E. 55 semble. This minority view has recently been adopted by the Supreme Court of the United States, four justices dissenting, in a case holding that, where a husband deserted his wife in New York, established a domicil in Connecticut, and secured a divorce a vinculo on notice by publication only, the wife not appearing in the suit, this decree was not entitled to full faith and credit in a suit by the wife in New York for a separation and alimony. *Haddock* v. *Haddock* (1906) 26 Sup. Ct. 525. The majority opinion, while not denying that a suit for divorce is a proceeding in rem, yet refuse to support the logical result of this theory on the ground that if state A where one party is domiciled has jurisdiction to grant a divorce, which will necessarily affect the status of the defendant domiciled in state B, the inherent right of state B to determine the status of its citizens is impaired. But it would seem that as great an abridgment of the rights of both states occurs when neither is allowed to determine finally the status of a party domiciled within it, which is practically the result of the principal case.

The court attempts to distinguish the case of *Atherton* v. *Atherton*, supra, on the ground that in that case the divorce was granted in the state of matrimonial domicil. The distinction is believed to be untenable. If the Atherton case is based on the theory that this was the last place of actual cohabitation, it may be answered that such facts cannot per se give jurisdiction. *Le Mesurier* v. *Le Mesurier* L. R. [1895] A. C. 517. If on the theory that the wife's

domicil was constructively that of the husband, this is negatived by the finding of the New York court that the separation was due to the fault of the husband, and hence the wife had a separate domicil. 1 COLUMBIA LAW REVIEW 396.

In conclusion it is submitted that the principal case refuses to carry to its logical conclusion the accepted theory of divorce, is opposed to the weight of authority in this country, and is inconsistent with *Atherton* v. *Atherton*. It is supportable, if at all, only on the ground that public policy demands that divorces shall be granted only where one party is domiciled in the state and the other is therein personally served with process or voluntarily appears, or where the suit is at the matrimonial domicil. But these reasons would seem more appropriate for the consideration of the State legislatures than of the courts, whose regard for them must result in the abandonment of theory for a hopeless inconsistency in practice.

THE DUTY OF A RAILROAD TO REFRAIN FROM DISCRIMINATION IN GRANTING SIDETRACK FACILITIES.—Under its duty as a common carrier to provide adequate facilities and equipment for transporting such freight as may be presented to it for carriage, Hutchison, Carriers, 2nd ed., § 292, it is universally held that a railroad is bound to provide such stational facilities as are reasonably necessary for the loading and unloading of goods, such as warehouses, yards and freight houses. *Covington Stock-yards Co.* v. *Keith* (1891) 139 U. S. 128; Hutchinson, Carriers, 2nd ed., § 295d; Elliott, Railroads, § 1479. And, since the railroads, as public servants, exercise a portion of the sovereign power of the state, *Scofield* v. *Railway Co.* (1885) 43 Ohio St. 571, 593, it is held that they must provide these facilities without unjust discrimination as between shippers in substantially similar circumstances. *Ballentine* v. *Railroad* (1867) 40 Mo. 491; Elliott, Railroads, § 1468, because it is against the policy of the law to allow them to take advantage of their position as public servants to build up monopolies and stifle competition. *Coe* v. *Railroad* (1880) 3 Fed. 775.

With regard to sidetrack facilities, it is held that sidetracks are not a part of the adequate facilities which a railroad is bound to provide, *Covington Stock-yards Co.* v. *Keith*, supra; *Mann* v. *Railroad* (Mich. 1903) 97 N. W. 721, and that in contracting to put in such sidetracks, the railroad is granting a mere favor by special contract, which, so far as its duty to the public is concerned, the railroad company may remove at any time within its discretion. *Jones* v. *Newport News etc. Co.* (1895) 65 Fed. 736. Since the common law rule, that a common carrier must deliver to the warehouse of the consignee, is modified in the case of railroads, *Thomas* v. *Railroad* (Mass. 1845) 10 Met. 472, and, since the granting of sidetrack facilities must necessarily increase the difficulties of operation of the road, questions concerning which should be left largely to the discretion of the managers, *People* v. *Chicago & Alton Railroad* (1889) 130 Ill. 175, it seems that the conclusion of the courts that, so long as a railroad does not hold itself out to provide siding facilities, the